

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In re Applications of

) MM Docket No. 91-10

WHITE BROADCASTING PARTNERSHIP
et al.

) File No. BPH-891214MM
)

For Construction Permit for a New FM Station
Station on Channel 289A in Baldwin, Florida

RECEIVED

JUL 29 1991

To: Hon. Edward Luton, Administrative Law Judge

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WITNESS NOTIFICATION

Peaches Broadcasting, Ltd. ("Peaches") respectfully notifies
the following applicants of its intention to cross-examine these
witnesses at hearing:

Northeast Florida
Broadcasting Corp.

Lillian Holt
Dorothy Wade

Douglas Johnson

Douglas Johnson

JEM Productions
Limited Partnership

Joyce Morgan
Peter Knobel
George Enuton
Salvador Serrano
Robin Rothschild

White Broadcasting
Partnership

Charley Cecil White
Dianna Mae White

Holt, Johnson, Morgan and Mr. and Mrs. White are sponsors of
direct case testimony.

Wade is Northeast's limited partner.^{1/}

^{1/} Peaches' counsel was not present for Wade's deposition
and has not yet received a copy of the transcript of that
deposition. Consequently, Peaches is unable to provide a detailed
showing of need. Peaches expects that White or JEM, who
participated in this deposition, will provide such a showing. It
should be noted, at a minimum, that Wade is a 75% owner of
Northeast, is a limited partner in other applications, and has been
a limited partner in a number of other applications not mentioned
in Northeast's direct testimony. Holt is a local minority female
who has no broadcast experience and who apparently did not take the
lead in initiating the application or negotiating the structure of
the applicant or its governing documents.

Although Johnson proposes no integration, he has other broadcast interests and thus must be examined on the diversification criterion.^{2/} Johnson is an officer, director and stockholder in WXON-TV, Inc., licensee of WXON-TV, Detroit, Michigan. He is also a permittee of a new TV station in Katy, Texas and an individual applicant for another FM permit in California.

Knobel is JEM's limited partner, with 50% of its equity. Originally he held only 40%. Knobel Deposition Tr. 32-33 (June 27, 1991) (excerpts supplied as Exhibit 1 hereto) ("Knobel Tr.")^{3/} Rothschild, who is Enuton's sister, put up no money but held another 40% as a surety to guarantee that Enuton would be paid. Knobel Tr. 15-16, 50-51. Later Rothschild dropped out. Knobel Tr. 19.

Knobel advanced \$15,000 to \$25,000 toward prosecution of the application and proposes to loan JEM all of the \$250,000 JEM says it needs to build its station. Knobel Tr. 11-13. Knobel's law firm wrote the two most recent of JEM's three partnership agreements, both postdesignation. Knobel Tr. 13. The firm did the work without compensation as a favor to Knobel. Knobel Tr. 38-39. At her deposition, Morgan testified that at one time JEM even used Knobel's law firm, Battle Fowler et al., as JEM's address of record.

^{2/} See also Lorraine Walker Arms, 5 FCC Rcd 3426 ¶4 (Rev. Bd.), affirmed, 5 FCC Rcd 7013 (1990) (99% nonintegrated owner must testify because, according to the ALJ, he "is participating in this case for some reason[.]"

^{3/} Peaches is somewhat handicapped in preparing this Witness Notification because, while it participated in Morgan's deposition, it still has not received a copy of the transcript.

JEM's original partnership agreement (Exhibit 2 hereto) contained no provision restricting day to day discussions between the general and limited partners. Knobel testified that there were no such discussions, but also acknowledged that Morgan calls him every four weeks to discuss JEM business. Knobel Tr. 34-35, 52.

JEM's current partnership agreement (excerpts provided at Exhibit 3 hereto) contains a very unusual provision, §8.3(iii), which explicitly allows the limited partner to remove the general partner if the partnership suffers two consecutive quarters of operating losses. While Knobel testified that he did not intend to remove Morgan, he acknowledged that he had the power to do so if the station earned no profits for two quarters. Knobel Tr. 24. Morgan testified at her deposition that it would probably be over a year before the station turned a profit. Therefore, Morgan is highly susceptible to removal and replacement by Knobel.

JEM was not Morgan's idea.^{4/} JEM was conceived by broadcast consultants Serrano and Enuton. Serrano filed JEM's application himself, including therein as Exhibit E-10 an unusual Agreement (Exhibit 4 hereto) whereby JEM hired him "for the purpose of preparing, submitting and prosecuting" the application "until the Radio Station is built." (emphasis supplied). Apparently Mr. Serrano originally intended to act essentially as counsel, for he filed JEM's fee processing form with JEM's appearance himself, listing his address as JEM's address for service of process. See Exhibit 5 hereto. Since Serrano has no law license, it must be assumed that he was handling JEM's application before the FCC as a co-owner of JEM, pro se.

^{4/} In fairness to Morgan, Peaches emphasizes that nothing in this Witness Notification should be taken to suggest any evidence of misconduct on her part.

Morgan's deposition testimony revealed that Serrano and Enuton prepared the application, tied down the site, and arranged for Knobel to be the limited partner and provide the financing. Serrano and Enuton travelled to Jacksonville, saw Morgan, a minority female, on television (where she then anchored the news), went to her TV station and secured her services as "general partner." See also Knobel Tr. 29 (confirming that Enuton found Morgan.)

As noted above, Enuton's sister, Rothschild, originally owned 40% of JEM as a surety for Enuton. Later she dropped out. Knobel and Rothschild were together in at least three other applications with identical ownership percentages (20% for the "general partner", 40% for Knobel and 40% for Rothschild, the surety.) See Knobel Tr. 41 (Fernandina Beach, FL), 44-45 (Manahawkin, NJ) and 45 (Strasburg, CO).

This identical ownership structure -- involving another of Enuton's sisters as a 40% owner and surety and a different limited partner -- was the subject of an order by Judge Steinberg adding six issues in the Mecca, California case. Playa del sol Broadcasters, FCC 91M-2042 (released July 2, 1991) (Exhibit 6 hereto). Among those issues were whether Serrano and/or Enuton are real parties in interest in the application and whether the legal and/or organizational structure of the applicant is a sham. Id. at 2. Whether or not issues should be added here, at a minimum JEM's comparative bonafides are at issue because of Knobel's noninsulated behavior and future buyout rights; Enuton's role in organizing the applicant and his use of Rothschild as a "surety"; and Serrano's initial and continuing in the role of quasi-counsel and "consultant" to the applicant. See Perry Television, Inc., 5 FCC Rcd 1667 (Rev. Bd. 1990).

WHEREFORE, Peaches notices the foregoing witnesses for
crossexamination and respectfully requests their presence at
hearing.

Respectfully submitted,



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Counsel for Peaches Broadcasting, Ltd.

July 29, 1991

EXHIBIT 1

TRANSCRIPT OF PROCEEDINGS

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

----- -X
IN RE APPLICATIONS OF:

CHARLEY CECIL & DIANNA MAE WHITE,
d/b/a WHITE BROADCASTING PARTNERSHIP,

PEACHES BROADCASTING, LTD.

SAGE BROADCASTING CORPORATION OF
JUPITER, FLORIDA,

DOUGLAS JOHNSON,

NORTHEAST FLORIDA BROADCASTING
CORPORATION,

JEM PRODUCTIONS, LIMITED PARTNERSHIP,
c/o JOYCE MORGAN,

For Construction Permit for a New FM
Station on Channel 289A in Baldwin,
Florida.

: MM Docket No. 91-10

: File No. BPH-891213M

: File No. BPH-891214MN

: File No. BPH-891214MR

: File No. BPH-891214MZ

: File No. BPH-891214NA

: File No. BPH-891214ND.

ORIGINAL

----- -X
DEPOSITION OF PETER B. KNOBEL

Washington, D. C.

Thursday, June 27, 1991

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1 business address and the amount under limited partners
2 contribution is \$250,000. Do you see that?

3 A Yes.

4 Q Turn to the next page, paragraph 9, limited
5 partners loan. Limited partners agreed to loan to the
6 partnership the costs incurred by the partners as set
7 forth in paragraph 7 in an amount not to exceed, as you go
8 down towards the bottom of the page, \$250,000. Such funds
9 shall be loaned to the partnership as needed on request.
10 Now, what I am asking you is the \$250,000, and it appears
11 to be the same sum referred to in both paragraphs, is it a
12 cash contribution, capital contribution, or is it a loan?

13 A It is a loan.

14 Q Have you made any capital contributions to the
15 partnership other than that promised loan of \$250,000?

16 A To date? Yes.

17 Q Are the amounts that have been loaned to the
18 partnership drawn down from this \$250,000?

19 A No.

20 Q They are not.

21 A No.

22 Q What is the nature of those payments to the

1 partnership?

2 A Rephrase the question.

3 Q What is the nature of the payments made? Are
4 those capital contributions or are they advances or are
5 they loans in addition to the \$250,000? Or part of the
6 \$250,000?

7 A Right now capital contribution; they are capital
8 contributions.

9 Q Do you know if they have been recorded as
10 capital contributions by the partner?

11 A I don't know.

12 Q Do you know if she keeps a record of those
13 contributions?

14 A I presume so.

15 Q What is the purpose of the \$250,000? What was
16 it to be used for?

17 A \$250,000 was to be used for the building of the
18 station and running it for three months.

19 Q So that loan would not actually kick in until
20 the partnership acquired a construction permit?

21 A Correct.

22 Q And any other funds that have been advanced to

1 the partnership to date would be at risk?

2 A What does the term "at risk" mean?

3 Q You stand to lose all of those sums as capital
4 contributions?

5 A Yes.

6 Q What is the amount of your capital contributions
7 to date?

8 A I don't know.

9 Q Do you have any sense of approximately how much
10 has been advanced to the company -- I'm sorry, to the
11 partnership?

12 A 15 to \$25,000.

13 Q Okay.

14 Q Who drafted the second partnership agreement?

15 A Battle, Fowler.

16 Q Who requested that the agreement be redrafted?

17 A I don't recall.

18 Q Did the attorneys at Battle, Fowler suggest that
19 the agreement be redrafted?

20 A No.

21 Q Did Joyce ask for a revised agreement?

22 A It may have been that I am an applicant in other

1 Rothschild decided she no longer wished to be a limited
2 partner in Jem Productions?

3 A My discussions with Robin was that she was too
4 busy to get involved in going for other applications and
5 her business basically was not doing overly well and that
6 she just did not want to get overly involved in all of the
7 nuances of going through the process over and over and
8 over again.

9 Q Is she an applicant in other FM applications?

10 A I believe so.

11 Q Do you know if she has withdrawn from all of her
12 other interests in other applications?

13 A I don't know. She has in the ones that I have
14 been involved in.

15 Q Do you know if she is related to George E.
16 Newton?

17 A Yes.

18 Q What is the relationship?

19 A George's daughter.

20 Q Do you know whether Robin ever made a commitment
21 for a capital contribution to Jem Productions? Do you
22 want to look at the first agreement?

1 A What paragraph?

2 Q Page 3, paragraph 7B, you will see the initial
3 capital contribution listed for the general partner, for
4 the limited partners, and that is plural, but only your
5 name is listed?

6 A So she is not listed.

7 Q Right. Did she make any kind of limited partner
8 contribution?

9 A I don't know.

10 Q Did she commit to loaning any portion of the
11 \$250,000 mentioned in paragraph 9, page 4?

12 A If she is a limited partner, I guess the limited
13 partners agreed to loan \$250,000.

14 Q Was it your understanding that was going, those
15 funds would be loaned from you?

16 A Yes. It may have been -- she may have been a
17 guarantor of the loans.

18 Q A guarantor of a loan is normally at the
19 receiving end of the loan, are they not?

20 A Not if -- I don't know.

21 Q With respect to the second partnership agreement
22 I want to turn you to the capital contribution section

1 Q The third agreement includes only Joyce Morgan
2 and Beylen Communications Inc.; is that correct?

3 A Correct.

4 Q What was the reason for the drafting of the
5 third agreement?

6 A Robin Rothschild and Atlantic Pacific no longer
7 wanted to be partners in this application.

8 Q And is it correct in connection with the
9 drafting of this third agreement there was also a transfer
10 of Robin's interest to yourself and Joyce Morgan; is that
11 correct?

12 A Correct. Joyce Morgan's interests increased
13 from 20 percent to 50 percent.

14 Q When we refer to 20 percent to 50 percent we are
15 referring to equity percentages, is that correct?

16 A Equity ownership interests of this station.

17 Q Joyce is the sole general partner?

18 A Correct.

19 Q Let me turn you again to the capital
20 contribution section on page 3 of the third agreement?

21 A Yes.

22 Q The general partner's contribution changed again

1 profitable been given to you by Joyce Morgan?

2 A No.

3 Q Has George Newton given you any estimate of when
4 the station will be profitable?

5 A No.

6 Q Have you received any general information as to
7 how soon FM stations run a profit?

8 A No.

9 Q Can you confirm that this Section 8.3,
10 subsection 3, gives you the right to vote out the general
11 partner if the partnership suffers two consecutive fiscal
12 quarters of operating losses?

13 A That is what it says.

14 Q Is it your intent to terminate the general
15 partner after two consecutive quarters of losses?

16 A Not at all.

17 Q Does that same provision occur in --

18 A The third partnership agreement, yes.

19 Q That can be confirmed by the document?

20 A The reason it is there I believe is that not
21 knowing whether this would be taken to a financial
22 institution or not taken to a financial institution to

1 station?

2 A She has a pretty face. I guess he finds pretty
3 faces and asks them if they want to own a radio station.

4 Q Did he tell you that is what happened in this
5 case?

6 A Not in those words.

7 Q What words did he use?

8 A He said "I have an applicant in Jacksonville who
9 is interested in owning and building a radio station;
10 would you be interested in meeting her and becoming her
11 partner," and I said "sure". And she called me thereafter
12 and said "I would like to come visit you in New York" and
13 she came to visit me and that is how I met her.

14 Q Do you know if she had signed a partnership
15 agreement prior to the time she came to visit you?

16 A Definitely not. I don't believe so. I don't
17 think so.

18 Q Do you recall when that visit took place?

19 A No.

20 Q Approximately?

21 A I would have to say I am terrible on dates.

22 Q Before Halloween or after?

1 Q How old are you?
2 A 34.
3 Q And what is your educational background?
4 A I graduated from American University with a
5 degree in real estate and finance.
6 Q Okay. Do you have partners in your real estate
7 business?
8 A Yes.
9 Q The two individuals you mentioned before?
10 A I have many partners.
11 Q Anybody related to you?
12 A No.
13 Q Is Robin Rotschild a partner?
14 A No.
15 Q George Newton?
16 A No.
17 Q Salvador Sarano?
18 A No.
19 Q Joyce Morgan?
20 A No.
21 Q Can you explain in your own words how it came to
22 be that the percentage that Joyce Morgan had went from 20

1 percent to 50 and Robin left her-- her interests were not
2 distributed pro rata. Why was that?

3 A I felt that I got to know Joyce better and
4 better as she would call me from month to month and say
5 this is what she is doing and going on. And she called me
6 and told me that Robin wanted to get out of the station
7 and how did I feel about us being equal partners. And I
8 thought it sounded fantastic and said, it is your baby so
9 let's be partners, 50-50.

10 Q Was there any provision that you asked to be
11 revised or anything that you got in return?

12 A No.

13 Q Let me direct your attention to the new
14 partnership agreement?

15 A The section of whether she put up \$1200 capital?

16 Q No. That is not it. I would like to ask your
17 counsel to place before you two documents so you can read
18 them in parallel and not get confused, and one is the
19 original partnership agreement and in particular page 9 of
20 that agreement. This will take a second. Trust me, it
21 will save some time.

22 A Okay.

1 Q And the new one, in the May version, page 15.
2 You will notice paragraph 14 of the original partnership
3 agreement places various limitations on what you can do;
4 is that correct?

5 A Correct.

6 Q Now, there are also limitations contained in
7 Section 5.6 in the new draft?

8 A Correct.

9 Q Now, you will notice that those provisions are
10 substantially different now. Is there a reason for that?

11 A Is there a reason?

12 Q For the change in the limitations provisions.

13 A The reason is as my lawyers got into the fact of
14 the financing side of the agreement that the -- in the
15 event that there was a default, and only in the event
16 there was a default, that the lender, being me, might have
17 the option to have some word or discussion in how to
18 protect my \$250,000 investment.

19 Q Okay. Does that explain why, for example, if
20 you look at the top of page 10 of the earlier agreement
21 there is a provision that says you are restricted from
22 communicating with the general partner on matters

1 pertaining to the day-to-day operations of the station.
2 Does that explain why that provision is absent in the
3 second draft?

4 A No. I have no interest in the day-to-day
5 operation at all. I am too busy, nor do I have any
6 concerns at all in running a radio station on a day-to-day
7 basis. Only in the event that someone calls me and says
8 the station is going out of business and there is no hope
9 for the station and I want to protect my \$250,000, I do
10 want to have the right to say -- to make a phone call and
11 say hey, maybe you should do this or do that, not in the
12 running of the station but in the financial, keeping the
13 financial side of the station going.

14 Q So you would want to reserve the right in case
15 the station is in trouble to talk to Joyce on a day-to-day
16 basis until it improves. Is that what this accomplishes?

17 A It is supposed to accomplish that if the
18 \$250,000 is in trouble and Joyce has to go out and raise
19 more money that there is a say in the ability to help
20 raise that money or in myself putting in more money into
21 the transaction.

22 But it is not to say maybe you should change

1 they were supposed to file the limited partnership
2 agreement.

3 Q What is the name of the lawyer at Battle, Fowler
4 primarily responsible for this matter?

5 A I have no idea.

6 Q Is there -- would you hazard a guess?

7 A Would I?

8 Q There must be someone there that you know has
9 some involvement with this matter. Can you provide a
10 name?

11 A I gave this document to -- I asked my lawyer,
12 Marty Eidelman, who has nothing to do with this document,
13 to give me somebody who could, you know, take care of
14 this. It might have been a man named David Good who is no
15 longer at Battle, Fowler.

16 Q Does Battle, Fowler have a retainer agreement
17 with Jem Productions, Ltd.?

18 A No.

19 Q Or with you in connection with this matter?

20 A No.

21 Q Who pays, or who paid Battle, Fowler for its
22 work in connection with developing this partnership

1 agreement?

2 A They have never been paid.

3 Q Do they expect to get paid?

4 A No.

5 Q They did it -- what was the reason they did it?

6 A They do a lot of my work for free.

7 Q They don't get anything in return for that?

8 A I have a lot of other transactions that are very
9 large transactions that produce heavy fees and on minor
10 transactions like this, I don't get charged.

11 Q Okay.

12 A Same as firms do wills gratis.

13 Q Do they also do partnership agreements for the
14 other applications in which you invested?

15 A They are identical agreements.

16 Q So that we can be clear on the record, what are
17 the other cities in which you are are an investor or have
18 been?

19 A They are in the application.

20 Q You remember them?

21 A Do I remember them?

22 Q Yes?

- 1 A 60-40.
- 2 Q Who has 60?
- 3 A Who has 60? I believe I had 60 and my wife had
- 4 40 percent.
- 5 Q Now, Jacksonville and Baldwin, that is the same
- 6 thing?
- 7 A Fernandina Beach.
- 8 Q Okay. Who is the general partner in Fernandina
- 9 Beach?
- 10 A Who is the general partner?
- 11 Q Yes.
- 12 A I cannot remember who is the general partner.
- 13 Q Do you remember the equity split there?
- 14 A 20, 40, 40.
- 15 Q Okay. Is Robin Rothschild the person with 40?
- 16 A Yes.
- 17 Q You have 40?
- 18 A Yes.
- 19 Q Did Robin -- is she still in that deal?
- 20 A That deal -- the application was dropped.
- 21 Q Why was it dropped?
- 22 A Why was it dropped? The general partner had

1 Q Is it your testimony you don't remember the
2 person's name?

3 A Maldonado.

4 Q That is all right. That is your answer.
5 We will take a five-minute break.

6 (Recess.)

7 MR. HONIG: On the record.

8 BY MR. HONIG:

9 Q Have you ever had any interests in an
10 application in Kahalulu, Hawaii?

11 A No.

12 Q In Wallace, Idaho?

13 A No.

14 Q Now, continuing down the list, what is the name
15 of the general partner in Manahawkin?

16 A Dee Rollins.

17 Q Dee Rollins?

18 A Yes.

19 Q Now, what was the equity split in Manahawkin?

20 A In Manahawkin?

21 Q Yes.

22 A The equity split was 20, 40 and 40.

1 Q And Robin Rothschild has 40 and you have 40?
2 A Correct.
3 Q And what was the equity split in Strasberg?
4 A 20-40-40.
5 Q Again, it is Robin Rothschild and you yourself
6 have 40?
7 A Yes.
8 Q Do you have a recollection of who Ms. Maldonado
9 is?
10 A Who is Ms. Maldonado? As far as what?
11 Q How is she employed?
12 A How is she employed?
13 Q Yes.
14 A As far as what does she do for a living?
15 Q Yes.
16 A No.
17 Q Have you ever met her?
18 A No.
19 Q Have you ever spoken with her?
20 A Ms. Maldonado, yes, once.
21 Q Now, who is Dee Rollins? Is that a man or woman?
22 A A woman.

1 Q She is a college student, isn't she?
2 A She is in college?
3 Q I am asking, is that so?
4 A I don't know.
5 Q Okay. Off the record for a second.
6 (Pause.)
7 MR. HONIG: Back on the record.
8 BY MR. HONIG:
9 Q Did you inform Mr.-- Strike that.
10 You testified about why Robin Rothschild left
11 this application.
12 A Yes.
13 Q Was she compensated for having done that?
14 A No.
15 Q Do you know whether she paid Mr. Newton or
16 Mr. Serano in connection with this application?
17 A Do I know if she paid? I don't believe so.
18 Q Now, are you -- you are aware she is
19 Mr. Newton's daughter?
20 A Yes.
21 Q Now, did she put any money into this
22 application --